



INDUSTRY CIRCULAR

DEPARTMENT OF
THE TREASURY
Bureau of Alcohol, Tobacco and Firearms
Washington, D. C. 20226
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TAX CREDIT FOR CERTAIN SMALL DOMESTIC WINE PRODUCERS

Bonded Wine Premises Proprietors and Others Concerned:

Purpose. The purpose of this circular is to advise bonded wine premises proprietors that an ATF ruling concerning the small winery tax credit will be published in a future issue of the Alcohol, Tobacco and Firearms Quarterly Bulletin. The ruling will state that the small domestic wine producer tax credit authorized by 26 U.S.C. 5041(c)(1) is available only to eligible proprietors engaged in wine production operations and will read substantially as follows:

Small Winery Tax Credit.

Background. The Bureau of Alcohol, Tobacco and Firearms (ATF) has received inquiries concerning whether the tax credit for small domestic wine producers authorized by section 11201 of the Omnibus Budget Reconciliation Act of 1990 (the Act), Pub. L. No. 101-508, 104 Stat. 1388, is available to proprietors of bonded wine premises that do not produce any wine but engage in non-production activities such as the bottling or storage of wine produced by another bonded wine premises proprietor.

As amended by the Act, section 5041(c)(1) of the Internal Revenue Code of 1986 (26 U.S.C. 5041(c)(1)) provides that a person who produces not more than 250,000 wine gallons of wine during the calendar year shall be allowed a tax credit of up to \$0.90 per gallon on the first 100,000 gallons of wine (other than champagne and other sparkling wines) removed with payment of tax during such year for consumption or sale. The credit applies only to wine produced at a qualified bonded wine premises in the United States. The final rule published in the Federal Register by ATF

implementing the Act (T.D. ATF-307, 55 F.R. 52732 (December 21, 1990)), similarly provides that the tax credit is available to persons who "produce" not more than 250,000 gallons of wine during the calendar year. 27 C.F.R. 24.278(a).

The Act did not define what is meant by the term "produce" for purposes of determining which persons are eligible to claim the small winery tax credit. Consequently, there has been confusion concerning whether the proprietor of a bonded wine premises that does not produce wine in any amount qualifies for the tax credit as a small domestic producer.

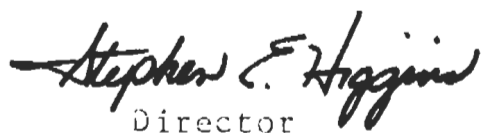
Pursuant to section 5351 of the Code, a bonded wine premises includes premises established for the production, blending, cellar treatment, storage, bottling, packaging, or repackaging of untaxed wine, including the use of wine spirits in wine production. However, section 5351 further provides that any such premises engaged in "production operations" may be designated as a "bonded winery." The Code does not specify what activities are included in the term "wine production operations." However, in T.D. ATF-307, the term "production" was defined for purposes of determining if a proprietor's wine production is within the 250,000 gallon limitation established by section 5041(c)(1). Specifically, section 24.278(e) states that production includes "wine produced by fermentation" and also includes "any increases in the volume of such wine due to the winery operations of amelioration, wine spirits addition, sweetening, and the production of formula wines."

ATF believes that the plain meaning of the term "produces," as utilized in section 5041(c)(1) of the Code, limits the availability of the tax credit to eligible proprietors of bonded wine premises engaged in wine production operations. In other words, proprietors must actually produce wine during the calendar year in order to take the small winery tax credit.

Held: The small domestic wine producer tax credit authorized by 26 U.S.C. 5041(c)(1) is available only to eligible proprietors engaged in the business of producing wine. These proprietors are required to have a basic permit under the Federal Alcohol Administration Act, as amended [49 Stat. 978; 27 U.S.C. 203]. A proprietor who has a basic permit to produce wine but does not produce wine during a calendar year may not take the small winery tax credit on wine removed during such calendar year. A proprietor who has obtained a new wine producers basic permit may not take the small winery tax credit on wine removed until wine is produced by such proprietor. "Wine production operations" include those activities described in 27 C.F.R. 24.278(e).

Pursuant to 26 U.S.C. 7805(b), this ruling will be effective with respect to removals of wine from bonded wine premises that occur on and after October 1, 1991. This ruling will not be applied with respect to removals from bonded wine premises that occur prior to October 1, 1991.

Inquiries. Inquiries concerning this circular should refer to its number and be addressed to: Associate Director (Compliance Operations), Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226.


Director